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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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09/152,992 09/14/98 SCHINDLER

R B045

EXAMINER

QM41/0316

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ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 03/16/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 12/23/98
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakai in view of Larsson.

Nakai discloses in figures 1-3 a nipple cover, substantially as claimed. However, Nakai does not disclose the cover being shaped as a hollow hemisphere of a plurality of holes disposed through the cover. Larsson teaches in figures 1-2 a nipple cover, as set forth in the previous office action. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the nipple cover as disclosed by Nakai could be fabricated in the shape of a hollow hemisphere and a plurality of holes as taught by Larsson for the reason set forth in the previous office action, Paper No. 2.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Wroten.

Wroten teaches in figure 1a pacifier manufactured from a flexible plastic material. It would have been obvious to one having ordinary skill in the art at the time that the invention was

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made that the nipple shield as disclosed by Nakai and taught by Larsson could be fabricated of a plastic material as taught by Wroten in order to prevent chafing of the nipple.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Lee.

Lee teaches in figure 7 a nipple cover comprising a cover that tapers in thickness near an edge of the cover. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the cover as disclosed by Nakai could be fabricated with a taper in thickness near an edge as taught by Lee for the reason set forth in the previous office action, Paper No. 2.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 9 above, and further in view of Lee .

Lee teaches in figure 7 a nipple cover comprising protrusions on the cover. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the protrusions as taught by Lee could be incorporated into the nipple cover as disclosed by Nakai for the reason set forth in the previous office action, Paper No. 2.

Response to Arguments

6. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
March 14, 1999

MICHAEL A. BROWN
PRIMARY EXAMINER